Nor Hasnizam bin Ab Latif v Public Prosecutor

COURT OF APPEAL (KUALA LUMPUR) — CRIMINAL APPEAL NO J-05-41 OF 1999
SHAIK DAUD, MOHD SAARI AND KC VOHRAH JJCA
16 NOVEMBER 2001

Criminal Law *— Murder — Intention to — Intention inferred from nature of wounds — Whether death was accidental — Penal Code s 300*

On 7 November 1997, the appellant and one Mohd Farid bin Ahmad ('Farid') dropped by at a hair dressing saloon where only SP7 and her five year old son, Ong Yao Yong ('Yong') were at the premises. There Farid pulled out a knife and stabbed SP7 a few times while the appellant went up to Yong and stabbed Yong, who was watching television at the time, on the chest. Yong was pronounced dead by SP3 at the District Hospital Segamat and a post mortem was conducted by SP4. Subsequently, the appellant and Farid were arrested. The appellant was charged with murder under s 302 of the Penal Code. The appellant was convicted on the charge and sentenced to death. The appellant appealed against his conviction and sentence. At the hearing of his appeal, learned counsel for the appellant addressed the court on the issue that the injury inflicted on Yong was accidental. This issue was considered by the trial judge who rejected the defence of accident and that the appellant was high on drugs. The appellant gave evidence in the examination in chief that he had grabbed Yong's neck with his left hand while his right hand was holding the knife. Yong was hurt when Yong fell on the knife. However, SP4 testified that the stabbing penetrated the heart and that the direction of the stabbing came from the front. The trial judge considered the evidence of SP4, SP7 and the appellant and found that, inter alia, he could not accept the defendant's evidence.

Held, dismissing the appeal and affirming the sentence of the court below:

(1) On the matter of intention to kill, it was a matter of inference from the nature of the wounds. The bone of contention of the defence was that the injury caused to Yong was accidental. From the nature of the injuries inflicted on Yong, it could be inferred that the appellant must have intended to kill Yong within the meaning of s 300 of the Penal Code (see p 158C, F).

(2) Looking from another perspective, the court failed to see why the appellant had to draw out a knife. He was not in danger nor was he being threatened by anyone. Yong was only a child aged five years and he could not have done any harm to the appellant. Apart from the appellant and Farid, only mother and son were in the premises (see p 158F–G).

A (3) The learned judge was not in error when he concluded that there was no reasonable doubt raised on the prosecution's case. The appeal was dismissed and the conviction and sentence of the court below affirmed (see pp 158H, 159A).

B **[Bahasa Malaysia summary**

Pada 7 November 1997, perayu dan seorang bernama Mohd Farid bin Ahmad ('Farid') telah singgah di sebuah kedai gunting rambut di mana hanya SP7 dan anak lelaki beliau yang berumur lima tahun, Ong Yao Yong ('Yong') berada di premis tersebut. Di situ Farid telah C mengeluarkan sebilah pisau dan menikam SP7 beberapa kali sementara perayu telah pergi ke arah Yong dan menikam Yong, yang sedang menonton televisyen ketika itu, di dada. Yong diisytiharkan mati oleh SP3 di Hospital Daerah Segamat dan satu post mortem telah diadakan oleh SP4. Berikutan itu, perayu dan Farid telah ditangkap. Perayu dituduh membunuh di bawah s 302 Kanun D Keseksaan. Perayu membuat rayuan terhadap sabitan dan hukuman beliau. Semasa perbicaraan rayuan beliau, peguam yang arif bagi pihak perayu telah mengemukakan kepada mahkamah persoalan bahawa kecederaan yang dialami oleh Yong adalah tidak disengajakan. Persoalan ini telah dipertimbangkan oleh hakim perbicaraan yang telah menolak pembelaan bahawa ia adalah satu E kemalangan yang tidak disengajakan dan bahawa perayu dipengaruhi dadah masa itu. Perayu telah memberikan keterangan dalam pemeriksaan utama bahawa beliau telah mencengkam leher Yong dengan tangan kiri sementara tangan kanan beliau memegang pisau. Yong tercedera semasa Yong terjatuh atas pisau tersebut. F Bagaimanapun, SP4 memberikan keterangan bahawa tikaman tersebut telah menembusi jantung dan arah tikaman tersebut adalah daripada depan. Hakim yang arif telah mempertimbangkan keterangan SP4, SP7 dan perayu dan mendapati, antara lain, beliau tidak boleh menerima keterangan defendan.

G **Diputuskan**, menolak rayuan tersebut dan mengesahkan hukuman mahkamah rendah:

(1) Berhubung perkara tentang niat untuk membunuh, ia adalah satu perkara inferens daripada sifat kecederaan. Isu utama pihak pembelaan adalah bahawa kecederaan yang disebabkan ke atas H Yong adalah tidak disengajakan. Daripada sifat kecederaan yang dialami oleh Yong, boleh dikatakan bahawa perayu sudah tentu mempunyai niat untuk membunuh Yong dalam maksud s 300 Kanun Keseksaan (lihat ms 158C, F).

(2) Melihat daripada perspektif yang lain, mahkamah gagal untuk I melihat kenapa perayu perlu mengeluarkan pisau. Beliau bukan dalam bahaya mahupun diugut oleh sesiapa. Yong hanya seorang kanak-kanak berumur lima tahun yang tidak mungkin

mencederakan perayu. Selain daripada perayu dan Farid, hanya ibu dan anak lelaki tersebut berada di premis (lihat ms 158F–G). A

(3) Hakim yang arif tidak terkhilaf apabila beliau memutuskan bahawa tiada keraguan munasabah yang ditimbulkan ke atas kes pendakwaan. Rayuan tersebut ditolak dan sabitan dan hukuman mahkamah bawahan dikekalkan (lihat ms 158H, 159A).] B

Notes

For cases on murder generally, see 4 *Mallal's Digest* (4th Ed, 2000 Reissue) paras 1155–1189. C

Cases referred to

Tan Buck Tee v PP [1961] MLJ 176 (refd)
Tham Kai Yau & Ors v PP [1977] 1 MLJ 174 (refd) D

Legislation referred to

Penal Code ss 299, 300

Appeal from: Criminal Trial No 45–10 of 1998 (High Court, Muar)

Manmohan Singh Gill (*Manmohan Kuna & Associates*) for the appellant.
Azman bin Ahmad (Deputy Public Prosecutor) for the respondent. E

Mohd Saari JCA (delivering judgment of the court): On 30 April 2001, in an oral judgment we unanimously dismissed the appeal of Nor Hasnizam bin Abdul Latiff against his conviction for murder and the sentence of death passed on him.

The appellant was convicted on the following charge and was sentenced to death: F

> Bahawa kamu pada 7 November 1997 jam lebih kurang 5.45 petang di Kedai Gunting Rambut JIA MIZZIE No 1, Jalan Cantik, Taman Suraya, Jementah di dalam daerah Segamat di dalam Negeri Johor, telah melakukan kesalahan bunuh dengan menyebabkan kematian kepada ONG YAO YONG (Sijil Kelahiran No J 472912), dengan itu kamu telah melakukan kesalahan yang boleh dihukum di bawah s 302 Kanun Keseksaan. G

On 7 November 1997, at about 5.30pm the appellant and Mohd Farid bin Ahmad ('Farid') alighted from their car JBX 4817 and dropped by at a hair dressing saloon known as JIA MIZZI No 1, Jalan Chantik Satu, Jalan Suraya, Gementah. At that time, only SP7 and her son aged five years named Ong Yao Yong ('Yong') were in the premises. H

After entering the premises, the appellant sat down and watched TV. In the case of Farid, he had his hair washed by SP7. Later, after SP7 had dried Farid's hair, Farid handed over RM10 to SP7. Then, after SP7 had returned the change of RM5 to Farid, Farid suddenly pulled out a knife and stabbed SP7 a few times. At that point of time, the appellant went up to Yong with a knife and stabbed Yong in the chest. Yong was at that time I

close by watching TV. Later, both the appellants fled and left the scene in their car.

Immediately after the incident, both the mother and son (deceased) were taken to District Hospital Segamat. SP3 examined Yong and pronounced him to be dead. Post mortem examination was carried out by a pathologist (SP4).

On the same day, acting on information received, the police succeeded in tracing the car JBX 4817 and they arrested the appellant and Farid at Batu 1, Jalan Segamat/Labis, Johor. From the car, the police found two knives, one wrapped in plastic and the other with newspaper.

According to the pathologist (SP4), the cause of death was due to internal bleeding resulting from the stab wound in the chest. SP4 described the stab wound at the front part of the chest as 4 x 1.8cm and 13cm deep. The stabbing had penetrated the left side of the fifth intercostal area and had injured the 5th and 6th rib slightly. The stabbing also penetrated the heart. He opined that the injuries to Yong could have been caused by a sharp instrument such as a knife (P6). Further, he said that the direction of the stabbing came from the front.

In the defence's case only the appellant gave evidence. In examination in chief, the appellant deposed that he worked as a supervisor in a company known as IOI Segamat. On 7 November 1997, he was on leave and was scheduled to meet a friend at Skudai JB at 9pm. As it was too early to leave for Skudai, he whiled away his time at a waterfall at Gunong Ledang. That evening, while passing through Gementah he and Farid stopped at a dressing saloon with the intention of committing robbery. After entering the premises, he watched TV while Farid had his hair washed by SP7. Later, Farid gave RM10 to SP7 who in turn gave a change of RM5 to Farid. At the stage when Farid was keeping the change in his trousers, Farid suddenly drew a knife and threatened to hurt SP7. SP7 was hurt while trying to run away from Farid. At that point of time, the appellant saw Yong standing on the arm of the sofa. Thinking that Yong was about to jump down, the appellant went up and grabbed Yong's neck with his left hand. The appellant had a knife in his right hand. Yong was hurt when Yong fell on the knife.

At the hearing of this appeal, the learned counsel for the appellant addressed the court on the issue that the injury inflicted on Yong was accidental. In this case, the trial judge had considered and rejected the defence of accident. It has to be pointed out his lordship also rejected the story of the appellant that he was high on drugs. Before us learned counsel for the appellant did not take up and argue on the matter of the appellant being high on drugs and nothing turns on the trial judge rejecting the story.

On the issue whether death was accidentally caused the learned trial judge had considered the evidence of SP7, SP4 and the appellant and arrived at the following finding:

> Persoalan pertama yang perlu diputuskan ialah sama ada cerita tertuduh pertama bahawa kecederaan yang dikenakan ke atas si mati adalah satu kemalangan dibuat tanpa niat dan secara tidak sengaja. Saya tidak dapat menerima keterangan tertuduh pertama tersebut. Jika versi tertuduh pertama itu benar, saya percaya kecederaan yang dialami oleh si mati tidak akan menjadi sebegitu serius sehingga menembusi karung jantung si mati. Melihat luka tikaman yang dialami si mati, saya berpendapat tikaman dibuat dengan begitu kuat menyebabkan kecederaan tersebut. Oleh itu, saya lebih percaya akan versi SP7 yang mengatakan melihat si mati ditikam oleh tertuduh pertama ketika si mati sedang duduk di kerusi. Keterangan SP7 adalah selari dengan keterangan Dr Shahdan bin Md Nor (SP4) yang mengatakan semasa disoalbalas oleh peguam tertuduh bahawa luka yang dialami oleh si mati mengarah dari atas ke bawah. Ini pada pendapat saya adalah berlawanan dengan keterangan tertuduh pertama. Jika keterangan tertuduh pertama diambilkira, tentu luka tersebut mengarah dari bawah ke atas.

On the question of intention to kill, it is a matter of inference from the nature of the wounds and it is pertinent to refer to the case of *Tan Buck Tee v PP* [1961] MLJ 176 at p 179 where Thomson CJ (as he then was) observed:

> There was the body with five appalling wounds on it, *wounds penetrating to the heart and liver*, which must have been caused by violent blows with a heavy sharp instrument like an axe. In the absence of anything else, *whoever inflicted those blows must have intended to kill the person on whom they were inflicted.* (Emphasis added.)

In his submission, the learned counsel for the appellant cited the case of *Tham Kai Yau & Ors v PP* [1977] 1 MLJ 174. In that case, the Federal Court discussed at some length the distinction between provision of ss 299 and 300 of the Penal Code.

The bone of contention of the defence was that the injury caused to Yong was accidental. From the nature of injuries inflicted on Yong referred to earlier and based on the authorities aforesaid, it could be inferred that the appellant must have intended to kill Yong within the meaning of s 300 of the Penal Code.

Looking from another perspective, we fail to see why appellant had to draw out a knife. He was not in danger nor was he being threatened by anyone. Yong was only a child aged five years and he could not have done any harm to appellant. Apart from the appellant and Farid, only mother and son were in the premises.

Based on the foregoing, it is our view that the learned judge was not in error when he concluded that there was no reasonable doubt raised on the prosecution case thus:

> Kesimpulannya, saya tidak dapat menerima cerita tertuduh mengenai bagaimana si mati mengalami kecederaan tersebut. Saya juga mendapati keterangan tertuduh pertama tidak menimbulkan apa-apa keraguan terhadap kes pihak pendakwa. Oleh itu, di akhir kes pembelaan saya berpuashati tanpa apa-apa keraguan yang munasabah bahawa tertuduh pertama adalah bersalah dan disabit atas kesalahan bunuh yang boleh dihukum di bawah s 302 Kanun Keseksaan.

A In the premise and for the reasons given above, we dismissed the appeal and affirmed the conviction and sentence of the court below.

Appeal dismissed, conviction and sentence affirmed.

Reported by Chew Phye Aun

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